

# Prospects for Democracy in Hong Kong: The 2012 Election Reforms

Updated February 1, 2011

Congressional Research Service

<https://crsreports.congress.gov>

R40992

## Summary

Support for the democratization of Hong Kong has been an element of U.S. foreign policy for over 17 years. The Hong Kong Policy Act of 1992 (P.L. 102-383) states, “Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997” (the date of Hong Kong’s reversion to China). The Omnibus Appropriations Act of 2009 (P.L. 111-8) provides at least \$17 million for “the promotion of democracy in the People’s Republic of China, Hong Kong, and Taiwan ...”

The democratization of Hong Kong is also enshrined in the Basic Law, Hong Kong’s quasi-constitution that was passed by China’s National People’s Congress (NPC) prior to China’s resumption of sovereignty over the ex-British colony on July 1, 1997. The Basic Law stipulates that the “ultimate aim” is the selection of Hong Kong’s Chief Executive and the members of its Legislative Council (Legco) by “universal suffrage.” However, it does not designate a specific date by which this goal is to be achieved.

On November 18, 2009, Hong Kong Chief Executive Donald Tsang Yam-kuen released the long-awaited “consultation document” on possible reforms for the city’s elections to be held in 2012. The document was immediately met by sharp criticism from representatives of Hong Kong’s “pro-democracy” parties. Five Legco members resigned on January 21, 2010, as a form of protest, forcing a by-election on May 16, 2010. The five incumbents were re-elected.

On June 7, 2010, Chief Executive Tsang submitted two motions to Legco increasing the size of the Election Committee (EC) for Chief Executive to 1,200 members and adding 10 new seats to Legco—five elected by geographical districts and five elected by “functional constituencies.”

Initially, the pan-democratic Legco members announced they would vote against the motions. However, a last-minute agreement between the pro-universal suffrage Democratic Party and the Chinese government led to a split among the pan-democrats, a coalition of parties that support a more rapid transition to universal suffrage. Legco passed both motions—one on June 24; the second on June 25—the first significant changes in Hong Kong’s political system since the Handover on July 1, 1997.

To implement the election changes, Legco will need to pass enabling ordinances detailing how to carry out the election reforms. On December 10, 2010, Chief Executive Tsang submitted two bills to amend Hong Kong’s election laws. The bill governing the election of the Chief Executive specifies how the additional EC members are to be allocated and sets the nomination threshold at 150 EC members. The bill governing the 10 new Legco seats will allow the Electoral Affairs Commission to determine how to allocate the five geographical seats (based on population projections) and establishes a “District Council (second) functional constituency” to elect the other five new Legco members. Under the new law, every Hong Kong voter will be able to vote for at least one functional constituency member of Legco.

The 2012 election reforms are important to Hong Kong’s democratization for two reasons. First, they are an indication of the Hong Kong government’s willingness to press for democratic reforms. Second, the Chief Executive and Legco selected in 2012 will have the power to implement universal suffrage for the Chief Executive election in 2017 and the Legco election in 2020, if they so choose. This report will be updated as circumstances warrant.

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## Overview

Well before the People's Republic of China (China) resumed sovereignty over Hong Kong on July 1, 1997—an event frequently referred to as the “Handover”—Congress demonstrated its concern about the prospects for democracy in the former British colony. The Hong Kong Policy Act of 1992 (P.L. 102-383) states, “Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997.” Section 301 of the U.S.-Hong Kong Policy Act required an annual report from the State Department to Congress on the status of Hong Kong, which was to include a description of “the development of democratic institutions in Hong Kong.” Section 202 gave the President the authority to suspend Hong Kong's separate treatment from China if he determines that China is not fulfilling “the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong.”<sup>1</sup>

The 111<sup>th</sup> Congress continued past congressional interest in Hong Kong's quest for democracy. On March 11, 2009, the Omnibus Appropriations Act of 2009 (P.L. 111-8) appropriated not less than \$17 million for “the promotion of democracy in the People's Republic of China, Hong Kong, and Taiwan ...”

In addition, China's stance on Hong Kong's democratization may also signal its intentions regarding political reforms on the Mainland and its preferred path to reunification with Taiwan. China's formulation of the “one country, two systems” policy in 1981 not only formed the legal basis for Hong Kong's Handover, it also provided China's framework for future relations with Taiwan.<sup>2</sup> Given Taiwan's recent advances in democracy, it is uncertain if the “one country, two systems” model remains viable, especially if China appears reluctant to allow significant political change in Hong Kong.

Under the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the city's quasi-constitution, the “ultimate aim” is the selection of Hong Kong's Chief Executive and the members of its Legislative Council (Legco) by “universal suffrage.” However, the Basic Law also stipulates that the selection of the Chief Executive and the Legco members is to be done “in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress.”<sup>3</sup> In addition, the Basic Law requires that any change in Hong Kong's election process be approved by both the Chief Executive and two-thirds of the Legco members.

Over the last 12 years, the issue of democratic reforms has been one of the preeminent political concerns in Hong Kong. Efforts by the Hong Kong government to modify Hong Kong's election system have been stymied by local opposition or intervention by the Chinese government. Proposed changes for Hong Kong's elections of 2007 and 2008 were rejected by Hong Kong's Legislative Council (Legco) in 2005. Formal consideration of possible democratic reforms for the

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<sup>1</sup> The Joint Declaration makes no reference to either democracy or universal suffrage. Annex I of the Joint Declaration does state that Hong Kong's Chief Executive “shall be selected by election or through consultations held locally and be appointed by the Central People's Government,” and the Legislative Council “shall be constituted by elections.”

<sup>2</sup> The concept of “one country, two systems” initially emerged following a discussion of the Standing Committee of the National People's Congress on relations with Taiwan in September 1981, that resulted in the “Nine Article Statement.” In January 1982, Deng Xiao-ping made the first public reference to “one country, two systems” during a meeting with foreign officials, stating “The ‘Nine Articles Statement’ ... actually means ‘one country, two systems’ ... Roughly speaking, these articles apply to not only the question of Taiwan, but the issue of Hong Kong as well.” For more information on “one country, two systems,” see Wen Qing, “‘One Country, Two Systems’: The Best Way to Peaceful Reunification,” *Beijing Review*, No. 33, 1990.

<sup>3</sup> Articles 45 and 68 of the Basic Law.

2012 elections was terminated in December 2007 when China's Standing Committee of the National People's Congress (NPCSC) issued a decision precluding universal suffrage, but allowing for some limited reforms for the 2012 elections. Since then, there has been an active and vibrant debate over if and when Hong Kong will establish a fully democratic election system.

On June 24 and 25, 2010, Hong Kong made the first significant changes in its election system since the 1997 Handover. Legco passed a motion on June 24 that expanded the size of the selection committee for the Chief Executive from 800 to 1,200 members starting with the 2012 election. The following day, Legco passed a second motion that increased its size from 60 to 70 members—35 elected by geographical districts and 35 selected by so-called “functional constituencies.” These two motions—which only days before looked destined to be defeated—were passed because of a last-minute agreement between Hong Kong's pro-universal suffrage Democratic Party and representatives of China's central government.

To some, the passage of the two motions is the first step in Hong Kong's gradual progress towards universal suffrage. To others, the brokered last-minute agreement may prove to be a setback for Hong Kong's democratic development, as it has caused a rift among the pan-democratic coalition and major infighting among the Democratic Party. More may be known about the implications of the passage of the two motions when Legco considers implementing ordinances for the election reforms.

## Historical Background

From 1842 to 1997, Hong Kong was a British Crown Colony, ruled by a Governor appointed by the Queen of England. In 1843, the British Parliament passed legislation establishing a Legislative Council (Legco) in Hong Kong—appointed by the Governor—to advise the Governor and his administration. Over time, Legco's powers were expanded, giving the body an effective veto over the decisions of the Governor. In addition, the appointed Legco was transformed into a semi-democratic institution. Despite these changes, for over 150 years, Hong Kong's political system mainly consisted of a more powerful Governor and a less powerful Legco.

In 1985, Legco had its first “elected” members, including 12 selected by “functional constituencies”—professional or special interest groups considered important for the economic and social well-being of Hong Kong. Ten years later, Hong Kong's last Legco under British rule was selected under political reforms proposed by Governor Chris Patten. The final British Legco consisted of 60 members—20 elected by regional plebiscites, 10 selected by a special Election Committee, and 30 selected by 29 functional constituencies. Other important aspects of Patten's reforms were the abolishment of “corporate” votes in the functional constituencies and the expansion of the functional constituencies so that most adults in Hong Kong could vote in one of the functional constituencies.

While many hailed Patten's reforms as a belated effort to implement democratic reforms in Hong Kong, the Chinese government viewed the Governor's actions as a violation of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (the Joint Declaration), the official document governing the transfer of Hong Kong. Although the Joint Declaration made provision for the separate legislative power in Hong Kong, it also stipulated that the “laws currently in force in Hong Kong will remain basically unchanged.” The Chinese government maintained that Patten's Legco reforms were inconsistent with this provision of the

Joint Declaration. China subsequently reversed Patten's reforms by abolishing the 1995 Legco and seating the Provisional Legislative Council after the Handover.<sup>4</sup>

A political movement for democracy in Hong Kong arose even before the end of British rule. A few of Hong Kong's political parties—most notably, the Democratic Party and the Frontier Party—began advocating the election of the Chief Executive and Legco by universal suffrage as soon as possible. Other Hong Kong political parties—in particular, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Liberal Party—supported a more gradual and cautious approach to election reforms.

## **The Basic Law and Hong Kong Elections**

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was passed by the National People's Congress on April 4, 1990, establishing the new government structure for Hong Kong under Chinese sovereignty.<sup>5</sup> Much like under British rule, the Basic Law created an executive-led government, headed by a Chief Executive, as well as a representative legislature called the Legislative Council (Legco). The first Chief Executive chosen after the Handover was to be selected by an Election Committee consisting of 800 people, chosen by the Chinese government, and equally divided among four "sectors" of Hong Kong society.<sup>6</sup> The first post-Handover Legco was to consist of 60 members, some elected based on geographical districts and some selected by functional constituencies.

Articles 45 and 68 of the Basic Law state that the "ultimate aim" is the selection of Hong Kong's Chief Executive and the members of Legco by "universal suffrage." The processes of reforming the selection process for the Chief Executive and Legco are specified in Annex I and II of the Basic Law. Both annexes precluded changes in the election process until after 2007. To amend the selection process for the Chief Executive, Annex I stipulates that the proposal must be endorsed by two-thirds of Legco, consented to by the Chief Executive, and approved by the NPCSC. To amend the selection process for Legco, Annex II requires the proposal must be endorsed by two-thirds of Legco, consented to by the Chief Executive, and "reported to" the NPCSC. As a result, both the Chief Executive and Legco in office must approve changes in Hong Kong's election laws, including the transition to universal suffrage.

Following the Handover, democratic reforms emerged as one of the main political issues in Hong Kong. The "pan-democracy" parties and other organizations (such as Basic Law Article 45 Concern Group) continually pressured the first Chief Executive, Tung Chee-hwa, and the Hong Kong government to take steps to advance democracy in Hong Kong. On March 10, 2005, Tung submitted his resignation in part because of public dissatisfaction with his failure to support universal suffrage in Hong Kong.<sup>7</sup> Tung was succeeded by his Chief Secretary for Administration, Donald Tsang Yam-kuen.

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<sup>4</sup> For more information on Patten's reforms and the Provisional Legislative Council, see CRS Report 97-557, *Hong Kong's "Provisional Legislature" Controversy*, by Kerry Dumbaugh, available to congressional clients upon request.

<sup>5</sup> The full text of the Basic Law is available online at <http://www.basiclaw.gov.hk/en/index/>.

<sup>6</sup> The four sectors are: 1. industrial, commercial, and financial sector; 2. the professions; 3. labor, social service, religious and other sectors; and 4. members of Legco, representatives of district-based organizations, Hong Kong deputies to the NPC, and representatives of the Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference. The first Chief Executive, Tung Chee-hwa was chosen in 1996 by a Selection Committee of 400 people; he assumed office on July 1, 1997.

<sup>7</sup> Tung's official reason for his resignation was health. In addition to fallout from his failure to support democratic reforms, Tung also suffered from a lack of popular support that has been attributed to such factors as his highly

## The Proposed Reforms of 2005

The new Chief Executive quickly found himself immersed in the democracy controversy, especially following his submission in 2005 of proposed reforms for the 2007 Chief Executive election and the 2008 Legco elections. Under Tsang's proposal, the size of the Election Committee would have increased from 800 to 1,600 people, and the number of seats in Legco would have increased from 60 to 70, with the 10 new seats equally divided between geographical and functional constituencies. There was apparent widespread opposition to the proposal, as indicated by the large turnout at a December 4, 2005, rally for democracy in Hong Kong.<sup>8</sup> Among the main objections to the proposal were the inclusion of non-elected District Council members on the Election Committee, the expansion of the number of functional constituency seats in Legco, and the lack of a roadmap to universal suffrage. On December 21, 2005, Tsang's proposal failed to obtain the necessary two-thirds vote in Legco when 24 "pro-democracy" members voted against the measure.

The failure to amend the election process in 2005 meant that the 2007 Chief Executive election and the 2008 Legco election would take place under the existing system. The focus of Hong Kong's democratic movement shifted to the concurrent Chief Executive and Legco elections scheduled for 2012.<sup>9</sup> Chief Executive Tsang initiated a process of public consultation on the subject of "constitutional development," that involved the formation of the Commission on Strategic Development to study the issue of universal suffrage in Hong Kong. The pro-democracy forces advocated the selection of the Chief Executive and all members of Legco by universal suffrage in the 2012 elections, while others favored more modest, incremental election reforms. In July 2007, the Commission completed its work and the Hong Kong government released the "Green Paper on Constitutional Development."<sup>10</sup>

## The Decision of December 2007<sup>11</sup>

A heated debate about election reforms brewed in Hong Kong until December 29, 2007. In response to a report from Chief Executive Tsang, the Standing Committee of the National People's Congress (NPCSC) released its "Decision on Issues Relating to the Methods of Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage."<sup>12</sup>

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unpopular attempt to pass "anti-sedition" legislation (required by Article 23 of the Basic Law) and the poor economic situation in Hong Kong during his tenure (primarily due to the Asian Financial Crisis of 1997).

<sup>8</sup> Estimates for the turnout vary depending on the source. The Hong Kong Police's official estimate was 63,000 people. The organizers of the event, the Civic Human Rights Front, said at least 250,000 people attended the rally. Estimates from two university research teams placed the figure at 60,000 to 80,000 and 80,000 to 100,000 people, respectively. Given the population of Hong Kong at the time, using the police estimate, it meant one out of every 100 Hong Kong residents attended the rally.

<sup>9</sup> The Chief Executive serves for a five-year term; Legco members serve for four years. As a result, the end of the Chief Executive and Legco terms in office coincide in 2012.

<sup>10</sup> The "Green Paper on Constitutional Development" is available online at <http://www.cmab-gpcd.gov.hk/en/consultation/index.htm>

<sup>11</sup> For more information about the NPCSC's decision, see CRS Report RS22787, *Prospects for Democracy in Hong Kong: China's December 2007 Decision*, by Michael F. Martin.

<sup>12</sup> Official English translation of the decision is available at [http://news.xinhuanet.com/english/2007-12/29/content\\_7334596.htm](http://news.xinhuanet.com/english/2007-12/29/content_7334596.htm).



In its decision, the NPCSC ruled out the direct election of Hong Kong's Chief Executive and Legco by universal suffrage in the elections of 2012. However, the decision also stated that the Chief Executive may be directly elected by universal suffrage in 2017, provided certain conditions were met. The NPCSC also decided that all members of the Legco may be elected by universal suffrage after the direct election of Chief Executive has taken place, effectively setting 2020 as the first possible year for fully democratic Legco elections.

However, the NPCSC's decision also indicated that it was possible to make changes in election procedures before 2017, subject to certain constraints. While the Chief Executive would still be selected by the Election Committee, it was possible to alter the size, constitution, and regulations governing the conduct of the Election Committee. Also, while the 50-50 split between the geographical and functional constituency seats in Legco could not be altered, the number of seats in Legco could be changed and the nature of the functional constituencies could be amended or revised.

A final important element of the decision was its specification of the process whereby changes in Hong Kong's election system were to be made. The NPCSC decision laid out a multi-step process that began with the Chief Executive presenting a report to the NPCSC on the need to amend the current process and ended with the Chief Executive presenting the approved amendments to the NPCSC for its approval or its records.

## **The 2008 Legco Elections**

Legco elections were held in Hong Kong on September 7, 2008, with the future of democratic reforms one of the key issues of the campaign. A pan-democratic coalition—consisting of the newly formed Civic Party, the perennial Democratic Party, the Hong Kong Confederation of Trade Unions, the League of Social Democrats (LSD), and a few other smaller political parties—campaigns in support of a quick transition to universal suffrage in Hong Kong. The “pro-Beijing” parties—the DAB, the Liberal Party, and the Hong Kong Federation of Trade Unions—advocated a more gradual transition towards democracy.

The outcome of the 2008 Legco election produced a few surprises (see **Table 1**). First, one of Hong Kong's longest-standing political parties—the pro-business Liberal Party—faired poorly, losing all three of its geographical constituency seats. Second, the DAB did well, gaining three seats. Third, despite the supposed public concern about democratic reforms, the pan-democratic parties lost two seats, but still retained enough seats in Legco—23 seats—to veto proposed election reforms.



**Table I. Results of the 2008 Legco Elections**  
by Political Party and Type of Constituency

Coalition	Political Party	Geographical Constituency Seats	Functional Constituency Seats
Pan-democrats	Civic Party	4	1
	Democratic Party	7	1
	Hong Kong Confederation of Trade Unions	1	0
	League of Social Democrats (LSD)	3	0
	Other	5	2
Pro-Beijing	Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)	9	4
	Hong Kong Federation of Trade Unions	0	1
	Liberal Party	0	7
	Other	1	12
Non-aligned	Unaffiliated	1	2

**Source:** CRS analysis.

No sooner than the 2008 Legco was sworn into office, its pan-democrat members began lobbying Chief Executive Tsang and the Hong Kong government to submit a proposal for Hong Kong's transition to full democracy. While the League of Social Democrats continued to push for universal suffrage in the 2012 elections, other pan-democrats shifted their attention to the possible 2012 election reforms and a possible roadmap to universal suffrage in 2017 and 2020. For their part, the pro-Beijing Legco members generally accepted the terms of the NPCSC decision, and focused their comments on the possible changes to be made in the 2012 elections.

## The 2012 Election Reforms

Although the NPCSC's decision effectively ended the discussion about universal suffrage before 2017, it left open the possibility of modest election reforms in 2012. Based on the contents of the decision, Chief Executive Tsang initiated a period of study and public consultation on possible amendments to Hong Kong's election process for the 2012 elections, with the Commission on Strategic Development once again responsible for the process. However, the work of the Commission has been fraught with problems.

During his campaign before the May 2007 Chief Executive election, Tsang had promised that, if elected, by the end of his term he would provide a proposal that would "focus on the final resolution, not a midterm resolution, for universal suffrage." To many, this campaign pledge indicated that his next election reform proposal would not only include changes for the 2012 elections, but would also specify when and how Hong Kong would make the transition to universal suffrage. On October 15, 2008, Tsang stated in his annual policy address that "In the first half of 2009, we will consult the public on the methods for electing the Chief Executive and for forming the Legislative Council in 2012." According to his critics, Tsang has broken both of these promises.

## Public Consultation and the Consultation Document

On January 15, 2009, Chief Executive Tsang announced that the public consultation on the 2012 elections would have to be delayed until the fourth quarter of the year due to a “once in a lifetime economic crisis.” Tsang affirmed that “Postponing the consultation to the fourth quarter this year does not mean canceling it,” and that the postponement still left ample time to make and implement amendments to Hong Kong’s election process before the 2012 elections. In the meantime, the Commission would continue its work on election reform.

On November 18, 2009, the Hong Kong government released its Consultation Document regarding the 2012 elections. The purpose of the Consultation Document was to identify for the public the key issues to be considered when proposing amendments for Hong Kong’s 2012 elections and narrowing the list of possible amendments to propose to Legco after the public consultation is completed in February 2010. Regarding the Chief Executive election process, the document identified five key issues: (1) the number of members in the Election Committee; (2) the composition of the Election Committee; (3) the electorate base of the Election Committee; (4) the nomination process for Chief Executive candidates; and (5) the political affiliation of the Chief Executive. Regarding the Legco election process, there are only three key issues identified: (1) the number of seats in Legco; (2) the electorate base of the functional constituencies; and (3) restrictions on the number of seats that can be held by people who are not of Chinese nationality or who have the right of abode in foreign countries. In addition to identifying various alternatives associated with these eight key issues, the consultation document indicated the view of the Hong Kong government at this time on each of these issues. **Table 2** lists the Hong Kong government’s recommendations.

Most of the key issues and the Hong Kong government’s views are self-explanatory, except for those involving the “electorate base” of the Election Committee and the functional constituencies. Under the current system, the registered “voters” for some of the functional constituency seats in Legco are corporations and other legal entities, not people. In addition, when selecting representatives to the Election Committee, some of the “voters” are corporations. Critics of this system see this as an anti-democratic provision that violates the goal of election by universal suffrage. It had been suggested that the voting rights be transferred to the specific directors or executives of the corporations or entities in question.

The release of the Consultation Document was viewed by some as Tsang breaking his campaign promise to provide a “final resolution” for universal suffrage. While the document contains analysis and recommendations on possible reforms for the 2012 elections (see **Table 2** below), it purposely avoids presenting a roadmap or blueprint for Hong Kong’s eventual election of the Chief Executive and Legco by universal suffrage. According to the Consultation Document, “... in accordance with the NPCSC decision, the HKSAR can only propose amendments to the two electoral methods for 2012.” The document asserts that reforms for the 2017 election can only be dealt with after the elections of 2012 and by implication, after Tsang leaves office.

**Table 2. Hong Kong Current Election System and Hong Kong Government’s Views for 2012 Election Reforms**

Election	Issue	Current System	Hong Kong Government View for 2012 Elections
Chief Executive	Number of members on Election Committee	800 members	“Not more than 1,200”

<b>Election</b>	<b>Issue</b>	<b>Current System</b>	<b>Hong Kong Government View for 2012 Elections</b>
Legislative Council	Composition of Election Committee	Equally divide members among the four sectors	Equally divide additional members among the four sectors; include elected District Council members in Committee as part of the fourth sector (see note below)
	Electorate base of Election Committee	Some votes by individuals, some by corporation	Continue to allow “corporate votes”
	Nomination process for Chief Executive	Nomination by “not less than 100 members”	Continue requirement of being nominated by at least one-eighth of the members of the Committee
	Political affiliation of the Chief Executive	Requires that the newly selected Chief Executive disavow his or her affiliation with a political party	Maintain the requirement that the newly selected Chief Executive disavow his or her affiliation with a political party
	Number of seats in Legco	60 seats; 30 by geographical constituency and 30 by functional constituency	Increase from 60 to 70; Legco members for the five new functional constituency seats to be selected by the elected members of Hong Kong’s District Councils
	Electorate base of functional constituencies	Some votes by individuals and some by corporations	Continue to allow “corporate votes”
	Restrictions on the number of seats that can held by people who are not of Chinese nationality or who have the right of abode in foreign countries	12 functional constituency seats are open to people who are not of Chinese nationality or who have the right of abode in foreign countries	Continue to allow such candidates to run for the 12 functional constituency seats open to people who are not of Chinese nationality or who have the right of abode in foreign countries

**Source:** Hong Kong government, “Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012,” Consultation Document, November 2009.

**Note:** The fourth sector includes “representatives of district-based organizations.”

## The Legco Resignation and By-Election

After the release of the Consultation Document, the LSD organized the resignation of five supportive Legco members to force a Legco by-election as a de facto referendum on universal suffrage. Three of the LSD members (Albert Chan Wai-yip, Leung Kwok-hung, and Raymond Wong Yuk-man) and two members of the Civic Party (Tanya Chan and Alan Leong Kah-kit) resigned from Legco on January 21, 2010. The Democratic Party voted against participation on

December 13, 2009.<sup>13</sup> The DAB, the Liberal Party and the other pro-Beijing parties did not support the LSD initiative, but also decided not to run candidates in the by-election.

The Legco by-election was held on May 16, 2010. All five of the incumbents won by an overwhelming margin over their opponents, but the turnout rate was comparatively low—17.2%—about one-third of the turnout for the previous by-election in 2007.<sup>14</sup> The LSD and its supporters considered the by-election a success, highlighting that nearly 580,000 people had voted. Opponents pointed to the low turnout rate as an indication that the by-election was a waste of time and government revenues.

## Submissions of the Motions to Legco

The consultation document provided strong indications of what would probably be included in Chief Executive Tsang's proposed motions to Legco for election reforms. On June 7, 2010, Stephen Lam, Secretary for Constitutional and Mainland Affairs, submitted two motions to Legco. The first would amend Annex I of the Basic Law to expand the Election Committee to select the Chief Executive in 2012 to 1,200 people, and would require that a person receive not less than 150 votes from the members of the Election Committee to be nominated.<sup>15</sup> The second motion would amend Annex II of the Basic Law to enlarge Legco to 70 members in the 2012 elections, with five new functional constituency seats and five new geographical constituency seats.<sup>16</sup> Details on how to select the additional Election Committee members and how to allocate the additional Legco seats would be determined in local ordinances passed after the motions were approved. It is assumed that the proposed ordinances would closely follow the recommendations in the Consultation Document. In general, beyond these changes, the 2012 elections would be conducted much like the elections of 2007 and 2008—if the two motions and the subsequent ordinances are approved by Legco.

Chief Executive Tsang set the date for Legco's vote on the two motions for June 23, 2010.<sup>17</sup> A two-thirds vote of the 60 Legco members was required to pass the motions. It was reported that all 23 of the pro-democracy members of Legco pledged to vote against the motions, unless significant changes are made in election reforms recommended in the Consultative Document.<sup>18</sup> If the 23 members had remained true to their pledge, they would have had sufficient votes to veto the two motions. The Hong Kong government launched in April 2010 its HK\$9 million (\$1.2 million) "Act Now" campaign to raise public support for the election reforms. Chief Executive Tsang and Civic Party member Audrey Eu Yuet-mee held a live, televised debate on the proposed election reforms on June 17, 2010.

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<sup>13</sup> Albert Wong and Gary Cheung, "Democratic Party Majority Rejects Resignation Plan," *South China Morning Post*, December 14, 2009.

<sup>14</sup> Hong Kong held a by-election on December 2, 2007, to fill the seat vacated by Ma Lik, chairman of the DAB, who died on August 8, 2007. That election was won by former Hong Kong Chief Secretary Anson Chan, who ran as a pro-democracy candidate. Voter turnout rate was 52.1%.

<sup>15</sup> Complete text of the motion provided in **Appendix A**.

<sup>16</sup> Complete text of the motion provided in **Appendix B**.

<sup>17</sup> "Reform Motions to be Moved June 23," press release, Hong Kong Information Services Department, June 7, 2010.

<sup>18</sup> "June 23 Vote on Political Reforms," *RTHK*, June 7, 2010.

## The Last-Minute Agreement and the Legco Vote

Although the motions initially looked destined to fail, the Democratic Party created the possibility for a compromise when it indicated it might support the motions if certain changes were made. These included maintaining the current nomination threshold for candidates for Chief Executive; promises from the Chinese government that the functional constituencies would be abolished by 2020; and the proposed five new functional constituency seats be chosen by popular vote, not by the elected members of the District Councils.

Secret negotiations between representatives of the Chinese government and the Democratic Party reportedly began in February 2010, but took on a more serious tone after the May by-elections. According to some observers, the relatively low turnout for the by-elections convinced the Chinese government that a compromise may be possible. Chinese officials working in its Liaison Office in Hong Kong<sup>19</sup> managed most of the negotiations with the Democratic Party. On June 7, 2010, NPCSC Deputy Secretary Qiao Xiaoyang gave a speech that partially addressed the Democratic Party's proposals, and reasserted China's commitment to universal suffrage in Hong Kong. Two weeks before Legco was supposed to take up the motions, Democratic Party Chairman Albert Ho Chun-yan stated that if China would allow the new functional constituency seats to be chosen by popular vote, the party's Legco members might back the motions. In the end, an agreement was reached under which the nomination threshold was left unchanged—one-eighth of the members of the Election Committee, and the five new functional constituency seats would be chosen by a popular vote in which people who cannot otherwise vote in a functional constituency can vote.

The last-minute agreement between the Chinese government and the Democratic Party had immediate ripple effects on Hong Kong politics. First, it split the pan-democratic coalition, as the Civic Party, the LSD, and others rebuked the Democratic Party for accepting the deal. Second, two of the founding members of the Democratic Party—Andrew Cheng Kar-foo and Martin Lee Chu-ming—also opposed the agreement. Cheng has resigned from the party in protest, and Lee and a number of other members are considering leaving the party. Third, Chief Executive Tsang's apparent lack of involvement in the negotiations has raised questions about his effectiveness as a political leader and raised concerns about China's direct involvement in Hong Kong's political system.

On June 24, 2010, Legco voted on the first motion concerning the selection of the Chief Executive. After an extended debate, the motion passed by a vote of 46 yeas and 13 nays.<sup>20</sup> Voting against the motion were the five Civic Party members, the three LSD members, Andrew Cheng Kar-foo, and several other traditional pan-democratic coalition supporters. The following day, Legco voted on the second motion. This time the vote was 46 yeas and 12 nays. LSD member Leung Kwok-hung (commonly known as "Long Hair") was removed from the chamber prior to the vote for his vocal protests.

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<sup>19</sup> China's relations with the Hong Kong government are handled by The Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (Liaison Office), which is located in Hong Kong.

<sup>20</sup> By tradition, the Legco President does not vote unless to break a tie.

## The December Bills

The two motions passed in June 2010 established the general principles for the selection of the Chief Executive and the expansion of Legco for the 2012 elections.<sup>21</sup> The specifics on how the general principles are to be implemented requires the passage of legislation to amend Hong Kong's current election laws. On December 10, 2010, Chief Executive Tsang submitted two bills – one to amend the ordinance and regulations governing the selection of the Chief Executive, and another to amend the ordinances and regulations governing the election of the Legco members.

### The Chief Executive Election (Amendment) Bill 2010

The submitted bill regarding the selection of the Chief Executive amends one ordinance, two regulations, and one order. Its main provisions are:

- The allocation the 400 additional EC members equally among the four EC sectors currently specified in Chief Executive Election Ordinance (Cap. 569);<sup>22</sup>
- The 100 new EC members for the fourth sector will consist of the 10 new Legco members,<sup>23</sup> 10 members of the Chinese People's Political Consultative Conference, 5 members from the Heung Yee Kuk, and 75 elected District Council members;
- The expansion of the eligible voters in the Chinese medicine subsector to include registered Chinese medicine practitioners; and
- The raising of the nomination threshold to 150 EC members, consistent with the past requirement of obtaining the support of one-eighth of the EC members.

### The Legislative Council (Amendment) Bill 2010

The submitted bill regarding the expansion of Legco to 70 members amends one ordinance and three regulations. Its main provisions are:

- The addition of five geographical constituency seats in Legco to be allocated among the five current districts so that no district has fewer than five seats or more than nine seats;
- The redesignation of the current District Council functional constituency as the "District Council (first) functional constituency," and the creation of a new functional constituency to be known as "District Council (second) functional constituency";
- The allocation of the five new functional constituency seats to the "District Council (second) functional constituency";

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<sup>21</sup> After the motions were passed, they were submitted to China's National People's Congress Standing Committee in August, which approved and/or recorded the amendments to Annexes I and II of the Basic Law.

<sup>22</sup> The first three sectors are based in general on economic (e.g., catering) or social (e.g., religious) factors. The fourth sector consists of governmental representatives, including Hong Kong's deputies to China's National People's Congress, the Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, the Legco members, Hong Kong's District Councils, and Hong Kong's Heung Yee Kuk (an advisory body representing Hong Kong's indigenous population).

<sup>23</sup> Prior to the 2012 elections, the seats allocated to the 10 additional Legco members will be filled by special members drawn from the District Councils, the Heung Yee Kuk and the Chinese People's Consultative Conference.

- The eligible voters for the five “District Council (second) functional constituency” seats will consist of all persons who are registered as electors for geographical constituencies, but are not registered as electors for any of the other functional constituencies;
- The restriction of *nominees* to District Council (first) and District Council (second) functional constituency seats to elected members of the District Councils;
- The restriction of *nominators for* (called “subscribers” in Hong Kong) District Council (first) and District Council (second) functional constituency seats to elected members of the District Councils;
- The requirement that nominees for the District Council (second) functional constituency seats be nominated by at least 15 elected District Council members; and
- The limitation of campaign expenses for the District Council (second) functional constituency to HK\$6 million (approximately US\$770,000).

## **The Response to the Proposed Legislation**

Prior to the release of the proposed legislation, Anson Chan Fang On-sang—ex-Legco member ex-Chief Secretary for Administration, and convenor of the Citizens’ Commission on Constitutional Development (CCCDC)—expressed the “deep concerns” the CCCDC had regarding the proposed changes in Hong Kong’s election laws.<sup>24</sup> Regarding the amendments for the selection of the Chief Executive, Chan criticized the proposal for not restructuring the composition of the Election Committee to make it more representative of the political and economic situation in Hong Kong. She explicitly cited the perceived overrepresentation of agricultural and fisheries sub-sector and the underrepresentation of the import and export and financial services subsectors. Chan also stated that the proposal should have replaced corporate voting with individual voting.

Regarding the amendments for the election of Legco members, Chan took issue with the election of the five new functional constituency seats by a territory-wide constituency. In her words, the proposal would “create two classes of geographically elected Legco members, with these ‘super’ District Councilors theoretically able to claim that they represent millions of electors compared to the smaller electorates in the five regional geographic constituencies.” To the CCCDC, such a disparity was undesirable. Chan’s other major concern about the proposal was the setting the threshold for District Council functional constituency seat nomination at 15; the CCCDC consider 10 a more reasonable number.

Chan’s criticisms of the proposed legislation were echoed in an article by Robert Keatley, published in the January 2011 issue of the *Hong Kong Journal*.<sup>25</sup> Keatley states that “pro-democracy parties” in Hong Kong would have preferred more diversity in the additional 400 members of the Election Commission. He also points to the disparities in the size of the electorates for the functional constituencies and the creation of “super-legislators.”

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<sup>24</sup> Citizens’ Commission on Constitutional Development, “Public Statement by Mrs. Anson Chan,” press release, December 2, 2010.

<sup>25</sup> Robert Keatley, “Hong Kong Closes a Prosperous Year, but Serious Issues Remain Unresolved,” *Hong Kong Journal*, January 2011.



During a press conference announcing the pending submission of the two bills, Secretary for Constitutional and Mainland Affairs Stephen Lam Sui-lung was asked about the decision to have candidates for the five new functional constituency seats run in a single election rather than divided them into five smaller districts. Secretary Lam stated that the Hong Kong government thought the proposed arrangement would be a fair arrangement to enable Hong Kong people to choose political parties, large and small, as well as independent candidates to represent them.<sup>26</sup>

Another important factor will be how the Chinese government responds to the proposed legislation. Some analysts have speculated that the Chinese government may question the creation of “super-legislators” who can claim greater public support than the Chief Executive. It is possible that, if the “pro-democratic parties” successfully modify the legislation to eliminate the “super-legislators,” the Chinese government may support the changes. By contrast, most analysts surmise that the Chinese government supports the proposed process for expanding the Election Committee.

## **Implications for Democracy in Hong Kong**

The key issue that is left unaddressed by 2010 election reforms is how the transition to universal suffrage will occur—if at all—in the elections of 2017 and 2020. Given that Hong Kong is an executive-led government, the 2017 Chief Executive election may be more crucial, especially given that the transition to universal suffrage for Legco elections is conditional upon the achievement of universal suffrage in the Chief Executive election. However, since Legco has the ability to block proposed policy changes by the Chief Executive, reforms of Legco elections in 2012 and 2016 are also important.

The path from nomination and selection of the Chief Executive by the Election Committee to the election of the Chief Executive by a popular plebiscite appears to be less problematic. The current speculation is that the Election Committee will be transformed into a purely nominating body, which will fulfill a condition specified in Article 45 of the Basic Law.<sup>27</sup> Once the nominees have been selected, the public will then elect the Chief Executive, subject to the approval of the NPCSC. It is generally thought that the transformation of the Election Committee into a nominating committee will provide the Chinese government with enough insurance that the elected Chief Executive will be approved by the NPCSC, thereby avoiding an embarrassing and unpleasant situation.

The main potential source of political struggle over the election of the Chief Executive by universal suffrage will be the size and constituency of the members of the nominating committee. In general, the pan-democrats would prefer a larger committee consisting of more elected members with a lower nomination requirement. By contrast, the Chinese government and its sympathizers in Hong Kong support a smaller nominating committee that is largely based on the Election Committee and a higher nomination requirement. Where the balance of these two forces lies is difficult to determine at this time.

The path for the transformation of Legco into a body in which all members are elected by universal suffrage is more difficult to see, especially given the 2010 reforms. One of the fundamental dilemmas of Hong Kong’s democratization process is the condition that any changes must be approved by two-thirds of the Legco members. At present, that means at least 10 of the

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<sup>26</sup> Constitutional and Mainland Bureau, “SCMA Speaks on Constitutional Development Local Legislative Proposals,” press release, December 8, 2010.

<sup>27</sup> Article 45 states “The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”

functional constituency members must vote in favor of the proposed reforms; in the future it will require at least 12. However, both of the most commonly discussed scenarios for a fully democratic Legco imply a loss of power for the existing functional constituency members of Legco or voters in their electoral base.

There are two leading scenarios by which Legco can be transformed into a body elected by universal suffrage. The first scenario involves the elimination of the functional constituencies, transforming Legco into a body with members elected only by geographical districts. The second scenario retains functional constituency seats, but either redefines their electoral base or increases the number of functional constituencies so that every voter in Hong Kong can vote in at least one functional constituency. There is skepticism that enough functional constituency members of the current Legco, or the members to be elected in 2012 and 2016, will be willing to eliminate their seats as of 2020. Similarly, it is unclear if enough members of Legco will support the second scenario, given the implicit dilution of their power.

## Issues for Congress

The release of the Consultation Document, the Legco by-election and the submission of the motions to Legco have reactivated consideration of democratic reforms in Hong Kong. Although the contents of these documents and the Hong Kong government's recommendations may not please everyone, they have clarified what Chief Executive Tsang sees as the next step towards universal suffrage in Hong Kong.

If Congress should determine it wishes to respond to Hong Kong's election reforms, one option is to indicate directly to the Hong Kong and Chinese governments its concerns and preferences. This could be done by various means, ranging from the passage of resolutions, to the convening of hearings, to submitting comments to the Constitutional and Mainland Affairs Bureau of the Hong Kong government.<sup>28</sup>

Alternatively, Congress could inquire of the Obama Administration what actions it was taking with regard to Hong Kong's 2012 elections, particularly if and how any of the \$17 million appropriated for "the promotion of democracy in the People's Republic of China, Hong Kong, and Taiwan" are being used on activities related to the 2012 elections.

Finally, in light of the NPCSC's December 2007 decision and subsequent developments in Hong Kong, Congress could request a report from the White House or an appropriate government agency on the status of Hong Kong's autonomy and its progress towards democracy.

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<sup>28</sup> Comments for consideration before the release of its report were to be sent via mail, facsimile, or e-mail on or before February 19, 2010, to: Constitutional and Mainland Affairs Bureau, Room 319, Main Wing, Central Government Offices, Lower Albert Road, Hong Kong.

## **Appendix A. Motion on Election of Chief Executive**

### **Draft Motion to be Put by the HKSAR Government to the Legislative Council Concerning the Amendment to the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region**

Pursuant to Article 7 of Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China of 6 April 2004, and the Decision of the Standing Committee of the National People's Congress on Issues relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2012 and on Issues relating to Universal Suffrage of 29 December 2007, the "(Draft) Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region" appended to this Motion is hereby endorsed by this Council by a two-thirds majority of all Members.

#### **(Draft) Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region**

1. The Election Committee to elect the fourth term Chief Executive in 2012 shall be composed of 1200 members from the following sectors:

Industrial, commercial and financial sectors—300

The professions—300

Labour, social services, religious and other sectors—300

Members of the Legislative Council, Hong Kong deputies to the National People's Congress, representatives of members of the District Councils, representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, and representatives of the Heung Yee Kuk—300

The term of office of the Election Committee shall be five years.

2. Candidates for the office of Chief Executive may be nominated jointly by not less than 150 members of the Election Committee. Each member may nominate only one candidate.

## **Appendix B. Motion on Legislative Council Reform**

### **Draft Motion to be Put by the HKSAR Government to the Legislative Council Concerning the Amendment to the Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures**

Pursuant to Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China of 6 April 2004, and the Decision of the Standing Committee of the National People's Congress on Issues relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2012 and on Issues relating to Universal Suffrage of 29 December 2007, the "(Draft) Amendment to Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures" appended to this Motion is hereby endorsed by this Council by a two-thirds majority of all Members.

### **(Draft) Amendment to Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures**

1. The fifth term Legislative Council in the year 2012 shall be composed of 70 members, and the composition shall be as follows:

Members returned by functional constituencies—35

Members returned by geographical constituencies through direct elections—35

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